

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.

Commenter	Comment +	Agency Response
	9 VAC 25-260-10 Designation of Uses No comment received	
CBF	9 VAC 25-260-20 General Criteria and Mixing Zones Opposes continuation of VPDES permitting policies authorized by existing standards for mixing zones; urges revision of the proposal to prohibit any new or expanded mixing zones for PCBs, mercury, lead or arsenic and to eliminate the use of allocation impact zones to prevent lethality to all aquatic life, including resident aquatic life and passing and drifting organisms not considered important species or consumable shellfish at 9 VAC 25-260-270.	
CBF	9 VAC 25-260-30 Antidegradation Policy Opposes continuation of VPDES permitting policy of holistic approach for antidegradation policy; urges revision of the proposal to require the application of the antidegradation policy to Tier I waters for all pollutants using a pollutant-by pollutant approach.	
ACB	9 VAC 25-260-50 Numerical criteria for dissolved oxygen, pH, and maximum temperature Swamp water special standards are appropriate. Given TDML funding low in VA and EPA requires clean-up, may be opportunity for TMDL implementation to work as it has in the Lynnhaven.	
CBF	Supports addition of narrative exemption to dissolved oxygen and pH criteria for swamp water.	
EPA	Include documentation in submission for EPA approval that adopted narrative and numerical criteria for the swamp waters are	

	<p>based on a sound scientific rationale and contain sufficient parameters to protect the designated use(s), explain how the natural condition provision will be determined and implemented for Clean Water Act purposes, and explain how DEQ plans to permit for “significant changes.”</p>	
HRPDC, HRSD, Navy	Supports the new numeric and narrative criteria, which better reflect natural conditions, for Class VII Swamp Waters.	
USFWS	Supports narrative criteria for dissolved oxygen and recommends numeric criteria and narrative language for pH such as: <i>“The pH range shall be 4 – 8 standard units unless established on a site-specific basis by the Board, where the Board has determined that uses are not impaired due to anthropogenic sources, except that all VPDES permits shall be limited to pH 6.0 –</i>	

VDGIF	<p><i>9.0 standard units and no discharge shall cause a change in the naturally occurring background range nor interfere with the existing and designated use. Excursions due solely to naturally occurring conditions shall not be interpreted as violations of the standard."</i></p> <ul style="list-style-type: none"> • Recommend a narrative be used to address DO criteria in these waters and continue to support the language recommended by USFWS. • Have reviewed list provided by DEQ of all currently designated Class VII Waters and those waters proposed for such designation and have determined that some of the waters on the list do not meet the criteria for "naturally occurring" swamp waters and recommend the waters on the list be further evaluated by DEQ, DGIF and other natural resource agencies to determine the validity of the current and proposed designations. 	
EPA	<p>9 VAC 25-26-55 Implementation procedure for dissolved oxygen criteria in waters naturally low in dissolved oxygen Explain what the replacement requirement would be to protect the DO through NPDES permits in swamp waters.</p>	
HRSD	<p>9 VAC 25-260-90 Site Specific Temperature Requirements Agrees the deleted text is not appropriate for inclusion in the Water Quality Standards regulation but requests that this protocol be immediately placed into guidance.</p>	
CBF, CBFM	<p>9 VAC 25-260-140 Criteria for Surface Water Support update to numeric criteria</p>	

	<p>for aquatic life and human health human health protection, particularly the new fish tissue criterion for methyl mercury and the recalculated human health criteria for 93 parameters based on EPA guidance.</p>	
CBF	<p>Urges the assistance of a TAC prior to the next triennial review to develop freshwater total dissolved solids (TDS) and, with assistance from DCR, numeric turbidity criteria to ensure effective implementation of storm water and TMDL programs and to maximize protection of aquatic life.</p>	
EPA	<p>EPA fully supports and commends Virginia on its proposal to modify many of the human health and aquatic life criteria but notes the proposed criteria for chloroform, barium, acrolein, and phenol are not consistent with EPA's recommended criteria and remind Virginia to include in the submission for approval a discussion and rationale for these new and revised criteria.</p>	
HRSD	<ul style="list-style-type: none"> • Supports deletion of the language in the first paragraph. • Does not support the wholesale acceptance of the 2000 EPA methodology for the calculation of human health criteria. The use of EPA's default fish intake and relative source contribution values result in extremely low human health criteria that provide an unnecessary, perhaps even costly, level of protection never intended by the human health standards. 	

	<ul style="list-style-type: none">• Does not support the addition of the new parameters diazinon, nonylphenol, and methylmercury until approved, promulgated and multi-laboratory validated methods are provided for their analysis.• Does not support changing the cadmium criteria at this time. Provided new data that demonstrates these proposed criteria are overly stringent.• Does not support changing the lead criteria at this time. The change is based on EPA's lead criteria adjustment factor used to convert the total recoverable metals standard to a dissolved metals standard. The same conversion factor does not necessarily apply to DEQ's current lead criteria.• The language on significant figures in footnote 7 needs to recognize that 40CFR Part 136 methods may not be able to meet the significant digits of the criteria.	
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<p>HRSD, Navy. VAMWA*</p> <p>Navy</p>	<ul style="list-style-type: none"> Strongly supports DEQ's plan to convene a TAC to review the technical issues associated with changing some of the numeric criteria. DEQ and the SWCB must delay implementing changes to the cadmium criteria until after the TAC has assessed the new data and provided its recommendations. <p>Supports the proposed change to the tributyltin criteria.</p> <p>To be consistent with EPA's 2007 revision to freshwater criteria for copper, DEQ should express the freshwater copper criteria as a 24 hour average and not as a "one hour average" in Footnote 1.</p>	
<p>SEL</p> <p>SEL</p> <p>VAMWA*, ASA , AUGCo, BEDCty, Fauquier, Henrico, LynchCo, Tapp, PFRWWTA,</p>	<p>Requests DEQ initiate for next water quality standards development cycle, aquatic life criteria for TDS and its constituents sulfates, chloride, calcium, magnesium, potassium and selenium, recognizing that DEQ only has aquatic life criteria presently for chlorides and selenium. Request based on need for water quality standards for TDML development in alkaline mine drainage areas.</p> <p>Postpone possible changes to the freshwater cadmium and lead aquatic life criteria until considered more fully in the Department's planned Technical Advisory Committee process.</p>	

StafCo, UOSA, WVWA		
USFWS, VDGIF	9 VAC 25-260-155 Ammonia Surface Water Quality Criteria Continues to recommend DEQ adopt revised aquatic life criteria for ammonia that will be protective of freshwater mussels; previously provided DEQ with recent published literature that shows freshwater mussels can be more sensitive to ammonia than standard test organisms. Available to work with DEQ WQS and VPDES program staff to develop criteria that will protect federally listed mussels.	
VDHSS	9 VAC 25-260-160 Fecal Coliform Shellfish Waters Requests that DEQ revise the fecal coliform criteria for shellfish waters to reflect changes they are making in their testing method to conform with the National Shellfish Sanitation Program.	
HRSD	Does not support the standards change that permits the use of mTEC agar for the analysis of fecal coliforms. This is not an approved method for the analysis of fecal coliforms and this administrative change has not been subject to the full APA process.	
CBF, CBFM, FNFSR, LFSW, Dean, SOS, Nagelvoort, Davenport, Poague, Goho, Marzolf, Wallinger, Bernard EPA	9 VAC 25-260-170 Bacteria; Recreational waters Opposed to relaxation of E. coli criteria for freshwater recreation use. <ul style="list-style-type: none"> EPA gives States flexibility in choice of illness rate (any rate between 8 -10 is protective of primary contact). However, Virginia's submission for approval to EPA of the final adopted criteria for bacteria must include a discussion and rationale of the 	

VDCR	<p>selected criteria and risk level.</p> <ul style="list-style-type: none"> • The Bacteria Section has also been clarified to list the geometric mean as the main criteria for assessment to ensure protection of primary contact recreational uses as this is considered the environmentally relevant endpoint. Virginia's submission for approval to EPA of adopted criteria for bacteria must include a discussion and rationale of the selected assessment protocol. EPA notes, as required by the BEACH Act, the State has proposed beach closure/advisory language which is appropriate (e.g. using 75% SSM for saltwater beach closure/advisories). EPA also notes the State has made organizational edits. <p>Supports the proposed move to the geometric mean and they believe that assessment based on the geometric mean is consistent with EPA policy though they take no position regarding the numeric criteria. Though not advocating a change in the standards at this time, Virginia's application of the primary contact recreation designated use to all waters regardless of location, climactic events, or public access render it difficult to meet the current bacteria standard for streams impaired by non-point sources of bacteria. Despite significant improvements in reducing the violation rate of the bacteria standard for a number of targeted stream segments, none have met the current primary contact recreation standard. They believe it important that the Board consider that TMDLs based on the current E. coli standard may</p>	
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<p>HRSD</p>	<p>require a 95-100% reduction in non-point source bacteria loadings when current technology and BMPs may only achieve an 80-90% reduction. DCR is finding it difficult to engage the support of citizens, businesses and localities when restoration goals are unlikely to be met.</p> <ul style="list-style-type: none"> • <i>Use of Geometric Mean:</i> Strongly supports the emphasis on the geometric mean value to assess standards attainment. EPA guidance states that the geometric mean is the more environmentally relevant standard for water quality assessment. • Does not support the language that specifies a minimum number of data points as well as a time frame necessary for the calculation of a geometric mean. This directly conflicts with current permitting practices. • <i>Adjustment of Illness Rate:</i> Strongly supports the freshwater <i>E. coli</i> criteria correlating to a 1.0% risk level. EPA supports a 1.0% risk level. This credible and technically defensible adjustment of the criteria will continue to protect public health and recreational opportunities in the Commonwealth. • <i>Former Section B:</i> Supports removing the language formerly in section B of this chapter pertaining to sewage dischargers as this is more appropriate for guidance. DEQ must ensure that this information is immediately placed into guidance to maintain continuity in the permit program. 	
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<p>HRPDC, Navy, BEDCty, VAMSA, VAMWA*, ASA AUGCo, Fauquier, Hanover, Henrico, LynchCo, SpotCo, PFRWWTA, Tapp, StafCo, UOSA, WVWA</p>	<p>DEQ should recommend the SWCB adopt the 206 CFU per 100 ml geometric mean for E. coli as well as the corresponding changes to the single sample E. coli criterion in freshwater recreational waters.</p>	
<p>Fairfax</p>	<p>DEQ should develop a new bacteria criterion to address storm water issues using cost benefit and risk analysis.</p>	
<p>RICH</p>	<p>Provided three alternatives in priority order for how to set the freshwater bacteria standard in Virginia that would allow DEQ to complete the water quality standards coordination process required by the CSO Policy for Richmond:</p> <ol style="list-style-type: none"> 1. Statewide WQS of 206 cfu/100 mL for E.coli 2. "Special standard of 206 cfu/100 mL for E.coli for a portion of the James River during the summer season (May 1-September 30) that would maintain the use as primary contact recreation. The E.coli standard for all other waters of the state would be set at 126 cfu/100 mL. Richmond has discussed its proposal with CBF (although CBF has not seen the draft text that Richmond would propose that the SWCB adopt). Richmond's perspective from the meeting with CBF is that CBF was amenable to the idea in concept, subject, of course, to reviewing the details of the proposal. The City provided draft alternative text for inclusion in the WQS." 3 Use Attainability Process (UAA) Process <p>If the SWCB rejects either Alternative 1 or 2, and chooses instead to set the E.coli standard at 126 cfu/100 mL statewide, certain</p>	

VAMWA	<p>portions of the James River will fail to meet WQS for freshwater bacteria. Without an attainable standard supportive of primary contact use, DEQ staff and interested participants will be required to conduct a use attainability analysis (“UAA”). The City does not support this approach. The UAA process is likely to be protracted and cumbersome, result in lengthy delays in implementation of the City’s LTCP. Most importantly, the end result could be entirely inconsistent with what Richmond believes all interested participants and DEQ staff are trying to achieve through this process – to preserve primary contact recreation use of the James River. In addition to prompting a UAA process, setting the bacteria standard at 126 cfu/100 mL for E.coli would trigger review by the Virginia General Assembly. If a proposed SWCB regulation is “more restrictive than applicable federal requirements” the text “shall be provided to the standing committee of each house of the General Assembly to which matters relating to the content of the regulation are most properly referable.” A statewide 126 cfu/100 mL standard would be more stringent than the acceptable EPA standard (see statement above that the 206 cfu/100 mL standard is “acceptable to the EPA.”). As Virginia evaluates adjusting the freshwater bacteria standard, the City poses the following policy question that would likely be asked at the General Assembly: “What is Virginia’s basis for maintaining the E. coli 126 cfu/100 mL freshwater bacteria standard (0.8% illness rate) that is more stringent than marine water standard (1.9% illness rate?”</p> <p>Believes the adjustment to the E. coli criterion is so important to the Commonwealth’s water quality programs that they propose the addition of a new section 170.B with</p>	
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	<p>an implementation provision strictly for POTW effluents which could be worded as follows: "Publicly Owned Treatment Works effluents discharging to freshwater streams shall be limited to a technology-based implementation level of 126 CFU monthly geometric mean."</p>	
<p>CBF</p> <p>HRSD</p>	<p>9 VAC 25-260-185 Criteria to protect designated uses from the impacts of nutrients and suspended sediment in the Chesapeake Bay and its tidal tributaries</p> <p>Supports clarification of water clarity criteria assessing shallow-water submerged aquatic vegetation designated use</p> <p><i>Section B: Submerged Aquatic Vegetation and Water Clarity.</i></p> <ul style="list-style-type: none"> • The last sentence of the opening paragraph of this section should be revised to state "Attainment of the shallow-water submerged aquatic vegetation designated use shall be determined using any <i>one</i> of the following criteria" (revision italicized) in order to be consistent with agency practice. • Supports removing the SAV and Water Clarity goals for MPNOH, PMKOH, and POCOH. • Supports the removal of the Elizabeth River segments from the table. There is no shallow water SAV habitat in these areas so removal is defensible. 	
<p>EPA</p> <p>WVWA</p>	<p>9 VAC 25-260-187 Nutrient Criteria for Lakes & Reservoirs</p> <p>Virginia's submission for approval to EPA of adopted nutrient criteria for lakes s must include documentation the criteria are based on a sound scientific rationale and contain sufficient parameters to protect the designated use(s).</p> <p>Objects to special phosphorous limit assigned to lakes managed by DGIF because this limit is typically</p>	

	double what would be assigned to lakes not managed by DGIF, is not protective of water quality, and is an exemption the Commonwealth is affording itself so that the Commonwealth does not have to comply with the same regulations it imposes on the regulated community.	
Navy	9 VAC 25-260-290 Tidal Water Sampling Supports the proposed repeal of this section because agree the sampling and assessment procedures should be addressed in the state Water Quality Assessment Guidance Manual.	
ACB	9 VAC 25-260-310 Special Standards and Requirements Manganese special standards are appropriate.	
Navy	Supports cancellation of section 310.s, special standard for chlorides, which will avoid in the future erroneous impairment listings in transition waters that are naturally high in chlorides.	
EPA	The proposed modifications are not well explained. Therefore, it is unclear if the deletions/insertions are substantive or just editorial corrections/changes. Virginia's submission for approval to EPA must include a discussion and rationale for the changes to the special standards and requirements.	
	9 VAC 25-260-320. Scenic rivers	
EPA	9 VAC 25-260-350. Designation of nutrient enriched waters Several water segments are deleted from the nutrient enriched water list. Virginia's submission for approval to EPA should include rationale to explain these deletions.	
	9 VAC 25-260-360. Section number and description columns.	
	9 VAC 25-260-380. Special standards column.	
GoochCo , VDC, VDHDW	9 VAC 25-260-390 through 540 Request remove PWS designation for intake in James R. at river mile	

	<p>127.26 (Section 10a of 420) because VDOC & VDH ODW have confirmed the intake for the James R. Correctional Center has been permanently transferred to the James R. & retention of the current PWS provision will adversely affect the county's desire to construct a wastewater treatment plant near Oilville in the Beaverdam Creek drainage.</p>	
EPA	<p>In response to public water supply use removal request from Goochland County, EPA said an existing use on or after November 28, 1975 can not be removed. (The corrections institution stopped using the intake in 2005)</p>	
Navy	<p>In section 2b of 530, Classifications for York River Basin, Jones Pond is classified as a public water supply which serves the raw water intake for Cheatham Annex Navy Station. This DoD facility has closed its water treatment plant and connected to the Newport News municipal water system. Therefore, Jones Pond should no longer be classified as a public water supply.</p>	
EPA	<p>Virginia's submission for approval to EPA must include a discussion and rationale for each of the changes to special standards and requirements. It is unclear with some of the deletions/insertions whether they are substantive changes to the designated use or just editorial corrections/changes. Providing further clarifications will go a long way in strengthening the reasoning for these changes to this Section. EPA reminds Virginia that States may remove a designated use which is not an existing use, if the State can demonstrate that attaining the designated use is not feasible. Virginia's submission for approval should include a use attainability analysis (UAA) covering each stream or stream segment that is being removed.</p>	
HRSD	<p>Other General Comments "HRSD does not support DEQ's</p>	

	<p>economic analysis approach. It does not adequately consider the imposition of new permit limits as a result of reasonable potential analysis nor does it indicate that many of the extremely low criteria concentrations are currently undetectable with the available analytical methods. Future effluent data may demonstrate a need for great capital expenditure in order to meet new permit limits associated with these more stringent criteria. While the potential for impact in this instance is unknown and not quantifiable, the text supporting the economic analysis should reflect this possibility. An underlying theme to several of these issues is the determination of acceptable risk. DEQ must open a dialogue to establish what level of risk is acceptable to the public. DEQ should be proactive in engaging the public in this dialogue, fully explaining costs as well as the benefits associated with varying risk levels. Doing so will ensure that criteria are set with the appropriate level of protection at acceptable risk levels and will assist in prioritizing restoration efforts."</p>	
VBWR	<p>Bay suffering from enrichment as are many other tidal waters. Need to get dredge permits and outlets to improve tidal flushing to Linkhorn Bay and Great Neck Creek.</p>	
WVWA (McEvoy)	<p>The Authority supports the designation of the headwaters of the Roanoke River as an Exceptional state Water (ESW).</p>	

+ Comment organized by section of regulation amended.

* Support VAMWA comments: AUGCo, ASA, BEDCty, Fauquier, Henrico, LynchCo, PFRWWTA, RICH, StafCo, Tapp, UOSA, and WVWA

List of Acronyms Used for the Organizations:

ACB = Alliance for Chesapeake Bay, Chris French, Director of Virginia Office

AUGCo = Augusta County, Jean Andrews, Regulatory Compliance Coordinator

ASA = Alexandria Service Authority, Karen L. Pallansch, General Manager
BEDCty = City of Bedford, Eric J. Rajaniemi, Coordinator of Pretreatment
Bernard = David Bernard
CBF = Chesapeake Bay Foundation Mike Gerel, Virginia Scientist
CBFM = Howard Tew, Sheryl Smith, Leigh Smith and 597 e-mails from members
Davenport = James Davenport
Dean = Archie Dean
EPA = US Environmental Protection Agency Region III, Cheryl Atkinson, US Environmental Protection Agency, Region 3, Water Protection Division
Fairfax = Fairfax County Department of Public Works and Environmental Services, Stormwater Management Division, Randolph W. Bartlett, Director
Fauquier = Fauquier County Water & Sanitation Authority, Barney E. Durrett, Jr., General Manager
FNFSR – Friends of the North Fork of the Shenandoah River, Leslie D. Mitchell-Watson, Executive Director; Ron Falyar, President; members Dennis Atwood, Roger A. Boland, Barbara Halvorson Ellen Nash and Jonathan Jay, Margaret Nelson
Goho = June Goho
GoochCo = Goochland County, Gregory K. Wolfrey, County Administrator, for the Goochland County Board of Supervisors
Hanover = Hanover County Department of Public Works, J. Michael Flagg, PE, Director
Henrico = Henrico County Department of Public Utilities, Arthur D. Petrini, PE, Director of Public Utilities
HRPDC = Hampton Roads Planning District Commission, John M. Carlock, Deputy Executive Director, Physical Planning
HRSD = Hampton Roads Sanitation District, James J. Pletl, PhD, Chief, Technical Services Division and Jamie Heisig-Mitchell
LFSW = Lord Fairfax Soil and Waters, Joan Comanor, Chairwoman and Lyle Schertz, Associate Director
LynchCo = Lynchburg County, Department of Public Utilities, Timothy A. Mitchell, PE, Director
Marzolf = Richard Marzolf
Nagelvoort = Bernard C. Nagelvoort
Navy = Department of the Navy, Christine H. Porter, Director, Regional Environmental Coordination Department by direction of the Commander
PFRWWTA = Peppers Ferry Regional Wastewater Treatment Authority, R. Charles Wallcraft, Executive Director
Poague = Peter Poague
RICH = City of Richmond, Christopher L. Beschler, Deputy Chief Administrative Officer; Robert C. Steidel, Deputy Director Department of Public Utilities; Ed Cronin, Greeley and Hansen
SELC = Southern Environmental Law Center, Mary Varson Cromer
SOS = Virginia Save Our Streams, Stacey Brown
SpotCo = Spotsylvania County, Edward Petrovitch Interim Director of Utilities
StaCo = Stafford County, Robert E. Bos, PE, Director of Utilities
Tapp = Town of Tappahannock, G. G. Belfield, Jr., Town Manager
UOSA = Upper Occoquan Sewage Authority, Charles P. Boepple, Executive Director
USFWS = United States Department of the Interior, Fish and Wildlife Service, Ecological Services, Karen L. Mayne, Supervisor, Virginia Field Office
VAMSA = Virginia Municipal Stormwater Association, Michael Schaefer, President
VAMWA = Virginia Association of Municipal Wastewater Agencies, Inc., Frank W. Harsen, Jr; Dick Sedgley; Jamie Heisig-Mitchell
VBWR – Virginia Beach Wetlands Restoration, Josh Macbon
VDC = Virginia Department of Corrections, Timothy G. Newton, Environmental Services Manager
VDCR = Virginia Department of Conservation and Recreation, Russell W. Baxter, Deputy Director
VDGIF = Virginia Department of Game and Inland Fisheries, Raymond T. Fernald, Manager, Nongame and Environmental Programs
VDHDW = Virginia Department of Health, Office of Drinking Water, Bennett K. Ragnauth
VDHSS = Virginia Department of Health, Division Shellfish Sanitation, Robert E. Croonenberghs, PhD, Director
Wallinger = Rosemary H. Wallinger

WVWA = Western Virginia Water Authority, Scott Shirley, Director of Wastewater Operations, and Michael T. McEvoy, Executive Director, Wastewater Services